

§ 21.48

38 CFR Ch. I (7–1–13 Edition)

(iii) Need employment services to secure and/or maintain suitable employment.

(Authority: 38 U.S.C. 3102)

(b) *Veteran previously participated in a VA vocational rehabilitation program or a similar program under the Rehabilitation Act of 1973, as amended.* A veteran who at some time in the past has participated in a vocational rehabilitation program under chapter 31 or a similar program under the Rehabilitation Act of 1973 as amended, and is employable is eligible for employment services under the following conditions even though he or she is ineligible for any other assistance under chapter 31:

(1) The veteran is employable in a suitable occupation;

(2) The veteran has filed a claim for vocational rehabilitation or employment assistance;

(3) The veteran meets the criteria for eligibility described in § 21.40; and

(4) The veteran has an employment handicap or serious employment handicap; and

(5) The veteran:

(i) Completed a vocational rehabilitation program under 38 U.S.C. ch. 31 or participated in such a program for at least 90 days on or after September 16, 1940; or

(ii) Completed a vocational rehabilitation program under the Rehabilitation Act of 1973 after September 26, 1975, or participated in such a program which included at least 90 days of post-secondary education or vocational training.

(Authority: 38 U.S.C. 3117)

(c) *Veteran never received vocational rehabilitation services from the Department of Veterans Affairs or under the Rehabilitation Act of 1973.* If a veteran is currently ineligible under chapter 31 because he or she does not have an employment handicap, and has never before participated in a vocational rehabilitation program under chapter 31 or under the Rehabilitation Act of 1973, no employment assistance may now be provided to the veteran under chapter 31.

(Authority: 38 U.S.C. 3117)

(d) *Duration of period of employment assistance.* The periods during which employment assistance may be provided are not subject to limitations on periods of eligibility for vocational rehabilitation provided in §§ 21.41 through 21.45 of this part, but entitlement to such assistance is, as provided in § 21.73 of this part, limited to 18 total months of assistance.

(Authority: 38 U.S.C. 3105)

[54 FR 21215, May 17, 1989, as amended at 56 FR 15836, Apr. 18, 1991; 75 FR 3165, Jan. 20, 2010]

§ 21.48 Severance of service-connection—reduction to noncompensable degree.

When a rating action is taken which proposes severance of service-connection or reduction to a noncompensable degree, the provisions of the following paragraphs will govern the veteran's entitlement to rehabilitation and employment assistance under 38 U.S.C. Chapter 31.

(a) *Applicant.* If the veteran is an applicant for rehabilitation or employment assistance when the proposed rating action is taken, all processes respecting determination of entitlement or induction into training shall be immediately suspended. In no event shall any veteran be inducted into a rehabilitation program or provided employment assistance during the interim periods provided in § 3.105 (d) and (e) of this title. If the proposed rating action becomes final, the application will be denied. See also § 21.50 as to initial evaluation.

(Authority: 38 U.S.C. 3104)

(b) *Reduction while in a rehabilitation program.* If the proposed rating action is taken while the veteran is in a rehabilitation program and results in a reduction to a noncompensable rating of his or her disability, the veteran may be retained in the program until the completion of the program, except if “discontinued” under § 21.198 he or she may not reenter.

(Authority: 38 U.S.C. 3103)

(c) *Severance while in a rehabilitation program.* If the proposed rating action

Department of Veterans Affairs

§21.51

is taken while the veteran is in a rehabilitation program and results in severance of the service-connection of his or her disability, rehabilitation will be terminated effective as of the last day of the month in which severance of service-connection becomes final.

(Authority: 38 U.S.C. 3103)

INITIAL AND EXTENDED EVALUATION

§21.50 Initial evaluation.

(a) *Entitlement to an initial evaluation.* VA will provide an initial evaluation to an individual who:

- (1) Applies for benefits under 38 U.S.C. chapter 31; and
- (2) Meets the service-connected disability requirements of §21.40.

(Authority: 38 U.S.C. 3101(9), 3106)

(b) *Determinations to be made by VA during the initial evaluation.* A counseling psychologist (CP) or vocational rehabilitation counselor (VRC) will determine:

- (1) Whether the individual has an employment handicap as determined in accordance with this section and §21.51;
- (2) Whether an individual with an employment handicap has a serious employment handicap as determined in accordance with this section and §21.52; and
- (3) Whether the achievement of a vocational goal is currently reasonably feasible as described in §21.53.

(Authority: 38 U.S.C. 3102, 3103)

(c) *Factors for assessment as part of the initial evaluation.* In making the determinations under paragraph (b) of this section, the following factors will be developed and assessed:

- (1) The handicapping effects of the individual's service-connected and non-service-connected disability(ies) on employability and on independence in daily living;
- (2) The individual's physical and mental capabilities that may affect employability and ability to function independently in daily living activities in family and community;
- (3) The impact of the individual's identified vocational impairments on the individual's ability to prepare for, obtain, and keep suitable employment;

(4) The individual's abilities, aptitudes, and interests;

(5) The individual's personal history and current circumstances (including educational and training achievements, employment record, developmental and related vocationally significant factors, and family and community adjustment); and

(6) Other factors that may affect the individual's employability.

(Authority: 38 U.S.C. 3106(a))

(d) *Need for cooperation in the initial evaluation process.* The individual's cooperation is essential in the initial evaluation process. If the individual does not cooperate, the CP or VRC will make reasonable efforts to secure the individual's cooperation. If, despite those efforts, the individual fails to cooperate, VA will suspend the initial evaluation process (see §21.362, regarding satisfactory conduct and cooperation, and §21.364, regarding unsatisfactory conduct and cooperation).

(Authority: 38 U.S.C. 3111)

[72 FR 14042, Mar. 26, 2007, as amended at 75 FR 3165, Jan. 20, 2010]

§21.51 Determining employment handicap.

For the purposes of §21.50, an employment handicap will be found to exist only if a CP or VRC determines that the individual meets each of the following conditions:

(a) *Vocational impairment.* The individual has a vocational impairment; that is, an impairment of the ability to prepare for, obtain, or keep employment in an occupation consistent with his or her abilities, aptitudes, and interests.

(b) *Effects of impairment not overcome.* The individual has not overcome the effects of the individual's impairment of employability through employment in, or qualifying for employment in, an occupation consistent with his or her abilities, aptitudes, and interests. This situation includes an individual who qualifies for a suitable job, but who does not obtain or keep the job for reasons beyond his or her control.

(Authority: 38 U.S.C. 3102)